

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 4022 of 2019**

Mahmood Khan S/o Mohammad Khan Aged About 63 Years R/o Near Ataa Besan Factory, Chilhati Mod, Mopka, Bilaspur District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, School Education Department, Mahanadi Bhawan Mantralaya, Atal Nagar Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Directorate Of Treasury Account And Pensions, Indrawati Bhawan Naya Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Joint Director Treasury Account And Pensions, Indrawati Bhawan Naya Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
4. Block Education Officer, Bilha, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Vivek Verma, Advocate
For State	:	Mr. Ishan Verma Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****17/05/2019**

1. The challenge in the present writ petition is to Annexure P/1 dated 29.04.2019 passed by the respondent No. 4 ordering for recovery of an amount of Rs. 2,63,368/- from the retiral dues that the petitioner is entitled for.
2. The contention of the petitioner is that the petitioner working as Head Master under the respondent retired from service on attaining the age of superannuation w.e.f. 31.01.2019. Till the date of his retirement there was no order of recovery initiated by the respondent. However,

abruptly after about three months from the date of his retirement the impugned order has been passed by the respondent No. 4 ordering for recovery of an amount of Rs. 2,63,368/- from the retiral dues payable to the petitioner on account of certain excess payment that was made to the petitioner w.e.f. January, 1987 to January, 2019.

3. counsel for the petitioner submits that the petitioner stands retired from service holding a Class-III post. Moreover, the recovery order has been issued after his retirement. Further the alleged payment had been first made to the petitioner in January, 1987 i.e. around 22 years prior to his retirement and lastly that the petitioner has not made any misrepresentation or played fraud in obtaining the alleged excess payment. Thus, according to the petitioner the impugned order of recovery is bad in law.
4. State counsel on the contrary opposing the petition submits that it is a case where after retirement of the petitioner only when settlement was being made it was detected that petitioner has been granted some erroneous fixation on account of which certain excess payment has been made to the petitioner. According to the State counsel since this excess payment was detected on his retirement, the impugned order of recovery has been issued and therefore it can be said to be bad in law.
5. Having heard the contentions put forth on either side and on perusal of record some of the admitted position as it stands is that (i)the petitioner has retired employee w.e.f. 31.01.2019. (ii)The petitioner stood retired from a Class-III post. (iii) The alleged excess payment made to the petitioner first was made more than 20 years ago. (iv)

The petitioner does not have any role in getting the said alleged erroneous fixation of pay.

6. At this juncture it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***"State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc."*** reported in **2015 AIR SCW 501**. The Hon'ble Supreme Court while deciding the said matter has laid down certain situations under which the recovery is totally impermissible under law. The situations as envisaged in the said judgment are as under :

"(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

7. Plain reading of the aforesaid narrations would clearly reflect that the case of the petitioner squarely fits in to all the situations as has been narrated herein above. Accordingly, this Court has no hesitation in holding that the impugned order of recovery is therefore bad in law and is also impermissible under law. In the light of the decision of the Supreme Court in the case of **Rafiq Masih(Supra)**. The writ petition

accordingly stands allowed and the impugned order dated 29.04.2019 is set aside/quashed. It is further directed that respondent should take all necessary measures for releasing the retiral dues to the petitioner at the earliest.

8. The petition stands allowed and disposed off.

**Sd/-
(P. Sam Koshy)
Judge**

Rohit